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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 44707 & 44708
)	
v.)	KOOTENAI COUNTY NOS.
)	CR 2008-22877 & CR 2011-9224
JOLENE JOY LEPO,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jolene Lepo was sentenced in two separate felony DUI cases to a combined prison term of twenty years, with eleven years fixed. In this consolidated appeal.¹ Ms. Lepo challenges the

¹ This Court consolidated the appeals in Supreme Court Docket Nos. 44707 & 44708, and augmented the appellate record to include the clerk’s record and reporter’s transcript filed in Ms. Lepo’s prior appeals (from the same underlying 2008 and 2011 district court cases) in Supreme Court Docket Nos. 43682 and 43764; the Court additionally ordered the preparation of limited, non-duplicative clerk’s record and reporter’s transcript in this appeal. See “Order Consolidating Appeal Nos. 44707 and 44708 and Augment Prior Appeals,” filed January 9, 2017. Citations to the appellate record filed in the prior appeals will use the designations “*Lepo I*, 2008” and “*Lepo I*, 2011” respectively; citations to the limited record prepared for the current appeals use the designations “*Lepo II*, 2008” and “*Lepo II*, 2011,” respectively.

district court's decision to relinquish jurisdiction in both cases, instead of placing her on probation. Mindful of the plain language of Idaho Code 19-2601(4) that allows a court to "[s]uspend the execution of the judgment at any time during the first three hundred sixty-five (365) days of a sentence," as interpreted by *State v. Thomas*, 161 Idaho 898, 900 (Ct. App. 2017) (holding that this 365-day period begins to run from the pronouncement of the sentence), and that the district court's jurisdiction therefore had already expired, Ms. Lepo contends that the district court's refusal to place her on probation represents an abuse of court's sentencing discretion.

Statement of the Facts & Course of Proceedings

In 2008, Ms. Lepo pled guilty to felony DUI and received a suspended ten-year sentence, with five years fixed, and probation. (*Lepo I*, 2008, R., pp.83, 87.) Later, in 2011, Ms. Lepo pled guilty to a new DUI charge, and she admitted violating her probation in the 2008 case as a result of the new conviction. (*Lepo I*, 2008, R., p.124; *Lepo I*, 2011 R., p.72.) In the 2011 DUI case, the court imposed a ten-year sentence, with six years fixed, and retained jurisdiction in both cases. (*Lepo I*, 2008, R., p.124; *Lepo I*, 2011, R., p.72.) After Ms. Lepo completed a rider, the court suspended the sentences in both cases and placed her on probation. (*Lepo I*, 2008, R., p.124; *Lepo I*, 2011, R., p.91.) The court subsequently revoked probation, but retained jurisdiction, and, in January of 2015, placed Ms. Lepo back on probation in both cases. (*See Lepo I*, 2011, R., pp.117, 296.)

Later, on September 8, 2015, the district court revoked probation in both cases and executed Ms. Lepo's previously-suspended prison sentences.² (*Lepo I*, 2008, R., p.454; *Lepo I*,

² Ms. Lepo filed notices of appeal from the orders revoking probation, but later moved for voluntary dismissal of those appeals, which this Court granted. (*Lepo II*, 2008, R., pp.49, 52; *Lepo II*, 2011, R., pp.33, 36.)

2011, R., p.335.) On October 14, 2015, Ms. Lepo filed a Rule 35 motion asking, in part, that the court retain jurisdiction and allow her to complete a new rider program. (*Lepo I*, R., p.457; *Lepo I*, 2011, R., p.337.)

On November 12, 2015, in response to Ms. Lepo's Rule 35 motions, the district court entered orders for retained jurisdiction in both cases, with a recommendation that Ms. Lepo be placed in the Correctional Alternative Placement Program (CAPP). (*Lepo I*, 2008, R., p.476; *Lepo I*, 2011, R., p.356.) Ms. Lepo completed that program, and ultimately earned a recommendation for probation. (APSI p. 1; Tr., p.3, Ls.16-19.)³

On November 3, 2016, following a rider review hearing, the district court entered an order in each case relinquishing jurisdiction. (*Lepo II*, 2008, R., p.56; *Lepo II*, 2011, R., p.40.) Ms. Lepo appeals from those orders. (*Lepo II*, 2008, R., p.58; *Lepo II*, 2011, R., p.42.)

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction, instead of placing Ms. Lepo on probation?

A. Introduction

Mindful of the fact that the district court's jurisdiction had expired by the time the court made its decision,⁴ Ms. Lepo contends that the court's refusal to place her on probation was

³Citations to the April 4, 2016 Addendum to Presentence Investigation Report and attached materials use the designation "APSI" and will include the page number associated with the electronic file containing those documents. All citations to the transcript refer to the rider review hearing that was held on November 3, 2016.

⁴ In its October 4, 2016 letter to the district court, the Idaho Department of Correction ("IDOC") states that the court's retained jurisdiction would expire on November 11, 2016, (APSI, pp.1, 24), which is a date 365 days after the court granted Ms. Lepo's Rule 35 motion and ordered retained jurisdiction. (*See Lepo I*, 2008, R., p.476.) However, the court's jurisdiction expired on September 7, 2017, which is 365 days after the court executed Ms. Lepo's sentences. *See* Idaho Code 19-2601(4) (as interpreted by *State v. Thomas*, 149 Idaho at 900).

unreasonable given the information before it, and that the decision to relinquish jurisdiction represents an abuse of discretion.

B. Standard Of Review

Idaho Code § 19-2601(4) allows a district court the option to suspend the execution of a judgment and retain jurisdiction over a defendant for up to 365 days. Retained jurisdiction allows the court an extended time to evaluate a defendant's suitability for probation. *State v. Vivian*, 129 Idaho 375, 379 (Ct. App. 1992). The court's decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The district court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the court has sufficient information to determine that a suspended sentence and probation would be inappropriate. *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013.)

C. Argument

Ms. Lepo was a suitable candidate for probation. She worked hard to succeed in her rider program, and she earned the IDOC's recommendation for probation. (APSI, p.30.) She completed all of the requirements for the program's Moral Reconciliation Therapy, Relapse Prevention Group, Anger Management, and Helping Women Recover courses. (APSI, pp.34-36; Tr., p.3, Ls.16-19.) And she applied herself whole-heartedly to the tasks at hand, performing housekeeping at the facility and providing significant hours of volunteer service. (APSI, pp.630, 680.) In addition to the prescribed Rider program curriculum, Ms. Lepo completed many other

classes that were offered, including Addiction Recovery, Strengthening Families, Financial Literacy, and Digital Literacy. (APSI, pp.63, 68.)

In her letter to the court, Ms. Lepo described her own progress and accomplishments:

This Rider has given me the opportunity to change my thinking, attitudes and [the] criminal and addictive behaviors that brought me here. I have been building healthy peer relationships along with a good work habits. I've learned positive community leadership roles and responsibilities that help me live and maintain a pro-social life style. I am learning job and life skills for my future, as well as values and principles that will help me in the community. ... I am determined and confident that my life can be turned around. I am eager to prove myself and move on with my life, leaving my past behind me.

(APSI, p.58.)

Ms. Lepo's Rider performance was not perfect. She accrued a variety of verbal warnings, due largely to her persistent talking and questioning, which staff perceived to be disrespectful, or sometimes "answer-shopping." (See, e.g., APSI, pp.33, 36.) She also received two formal disciplinary violations: one for keeping a live plant in her locker,⁵ for which she was ordered to stay on her bunk for five days; and a second violation for getting off of her bunk, for which she received two days of detention. (APSI, pp.32, 33.) However, these behaviors were neither severe nor criminal in nature, and they certainly do not justify the court's choice of eleven years' imprisonment, over probation.

In addition to the reports concerning Ms. Lepo's most recent rider performance, the district court had substantial information demonstrating Ms. Lepo's perseverance, success and accomplishment during her previous two rider programs, in 2011 and 2014. (See, e.g., *Lepo I*, 2008, pp.70, 80.)

⁵ Ms. Lepo likes plants, and taking care of them at the facility was among her duties. However, after other residents began to tease her, and moved the plants around, staff attempted to resolve the problem by directing Ms. Lepo to stay away from, and not even talk about, plants. (APSI, pp.5, 6, 14.)

The record also provided the district court with information about Ms. Lepo's difficult life, mitigating in favor of probation. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). Ms. Lepo had been sexually molested when she was a child, raped at the age of eighteen, and victimized by domestic violence as an adult. (*Lepo I*, 2008, PSI, p.12.) A woman now in her mid-fifties, Ms. Lepo suffers the far-reaching effects of that abuse, including post-traumatic stress disorder and depression. (APSI, p.12; *see also Lepo II*, 2011, Neurocognitive Evaluation, dated April 22, 2016, p.6) Ms. Lepo submits that her opportunities for successful treatment are far greater on probation than in prison, and that the district court failed to take her need for healing into account when it chose to relinquish jurisdiction.

In light of Ms. Lepo's accomplishment during her recent rider program, and the substantial mitigating evidence presented in this record, the district court abused its discretion when it refused to place her on probation, and instead relinquished jurisdiction.

CONCLUSION

Ms. Lepo respectfully requests that this Court vacate the district court's orders relinquishing jurisdiction, and remand her cases to the district court with directions that it place her on probation.

DATED this 30th day of May, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOLENE JOY LEPO
INMATE #38505
PWCC
1451 FORE ROAD
POCATELLO ID 83205

JOHN T MITCHELL
DISTRICT COURT JUDGE
E-MAILED BRIEF

LYNN NELSON
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas